

Indiana Public Defender Commission Meeting Minutes

June 27, 2007

Interim Chairman Hon. Daniel Donohue introduced the new members of the Indiana Public Defender Commission, Peter Nugent and Mark Rutherford. New members unable to attend were Attorney David Hensel and Rep. Phil Hoy.

Bettye Lou Jerrel presented certificates of appreciation, signed by the Supreme Court Justices, to the outgoing members of the Commission who were present – Norman Lefstein, Monica Foster and Rep. Ralph Foley. Past members, Les Duval and Bob Kuzman were unable to attend the meeting. Ms. Jerrel, a long-time commission member, spoke of the achievements of each outgoing member and their accomplishments for the Public Defender Commission. Chief Justice Randall Shepard also spoke, commending Norman Lefstein, Monica Foster, Rep. Ralph Foley, Les Duval and Bob Kuzman for his/her unfailing dedication and service to the Public Defender Commission.

In addition to Commission members and Chief Justice Shepard, the following persons attended the ceremony to honor the outgoing members: Lilia Judson, Executive Director of State Court Administration (STAD), David Remondini, Assistant Director of STAD, Larry Landis, Executive Director of the Indiana Public Defender Council, David Schneider and Marvin Smith from Lake County Public Defender Agency, and David Happe of the Madison County Public Defender Agency.

Interim Chairman Donohue called the business meeting to order at 2:50 p.m. Commission members attending were Susan Carpenter, Bettye Lou Jerrel, Sen. Timothy Lanane, Peter Nugent, Mark Rutherford and Rep. Amos Thomas. Also in attendance was staff counsel, Deborah Neal. Commission members unable to attend were David J. Hensel, Rep. Phil Hoy and Sen. Joseph Zakas.

Meeting Minutes: Interim Chairman Donohue presented the meeting minutes from the April 7, 2007 Public Defender Commission meeting for approval. Bettye Lou Jerrel moved for approval of the minutes as presented, and Susan Carpenter seconded the motion. The vote was unanimous in favor of approval.

Proposed Task Force To Study Indigent Defense in Indiana: Chief Justice Shepard addressed the Commission offering his concerns regarding a task force to study indigent defense in Indiana. He suggested certain questions that a task force may answer, such as (1) “What is the state of affairs regarding indigent criminal defense in counties that are not in the public defense program? (2) Although the Fund does not cover the costs for defending indigent misdemeanor cases, what would be the cost to the State for the misdemeanor defense expenses? (3) How many indigent defendants are charged with misdemeanors? (4) Is the mission of the Public Defense Commission an unfilled assignment? Justice Shepard stated the task force needs to assess the status quo and assess the need to move on to a tighter system.

Sen. Tim Lanane asked if there was a study of indigent defense in Indiana before the Commission was formed. Larry Landis stated that there was an assessment by the Spangenberg Group. Sen. Lanane said we need to get a copy of the assessment to let the new task force see if the goals of the Commission were reached. He stated there is still a matter of educating people to the costs of indigent defense. Sen. Lanane pointed out that even state senators had to be reminded of why public defense reimbursement is such an important program.

Betty Lou Jerrel stated one of the recent accomplishments of the Commission was to turn the light on what is happening in the present system of providing indigent defense in Indiana. Ms. Jerrel complimented staff counsel for the amount of information provided to the Commission concerning the counties participating in the program. She asked the Commission members to look over this material because it tells us exactly what is happening in the program counties.

Larry Landis said the reason that Norman Lefstein initially proposed this statewide study was Mr. Lefstein's sense of what is happening nationally to indigent defense. Mr. Landis stated if you are going to change a delivery system or political structure, you have to have a dialog and a consensus on two critical issues. One is state funding, which I think we all agree the goal is upfront state funding, not reimbursement. The other is the governance issue of who controls, who directs, and where is the accountability for quality and costs. Without that kind of discussion by a political group, the Bar leadership and the Judiciary, you might not be able to get a consensus in the State of Indiana (which is a home rule state) about a delivery system for indigent defense because there is so much resistance. Larry Landis further stated the only reason we have this present system is Les Duval and he tried to sell a statewide delivery system for three years in a row and could not get it passed in the Legislature. The compromise was a modification of the Ohio system, which is a reimbursement system with state standards. Amos Thomas pointed out that in the rural areas of the state, the opinions of the voters who elect the legislators have to be changed. He said that in his area very few people worry about someone accused of a crime.

Deborah Neal offered copies to the members of State and County Expenditures for Indigent Defense Service in Fiscal Year 2005 and State Indigent Defense Commissions, December 2006, both prepared by The Spangenberg Group for the American Bar Association. She explained that these are national studies that the Commission may use to compare Indiana's public defense program to those in other states.

Financial Status of Public Defense Fund: Deborah Neal reported that because the fund contains \$11,862.88 and claims this quarter total \$3,408,760.65, the requests for payment will be held until after July 1, 2007, when the fund receives its first disbursement for fiscal year 07-08.

Ms. Neal distributed to the members documents that show totals for each county's capital and non-capital reimbursements from the Fund since its inception to, and including, this 1st quarter of 2007; the report prepared on the estimate of cost for indigent defense for all 92 counties; and the financial sheets showing quarterly totals per participating county for non-capital reimbursements in fiscal years 04-05, 05-06 and 06-07.

Request for 50% Reimbursement in Capital Cases: The Commission addressed claims for 50% reimbursement in capital cases as follows:

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases			
June 27, 2007			
COUNTY	DEFENDANT		TOTAL
Clark	Melcher		\$708.95
Fulton	Baker		\$2,253.08

Lake	Aki-Khuam		\$45,643.76
Marion	Adams		\$90.14
	Turner		\$26,056.02
	Voss		\$6,686.54
Parke	Cottrell		\$4,074.92
Pike	Harbison		\$3,108.30
	Harbison 2		\$192.50
Spencer	Ward		\$23,162.90
Vigo	Walker		\$75.00
	Walker 2	*	\$1,726.80
TOTAL			\$113,778.91

Interim Chairman Donohue called for questions on the capital claims. Peter Nugent asked about mitigation expenses on the claims, and it was explained by Deborah Neal that the county paid those expenses first, then submitted a request for 50% reimbursement to the Commission. With no further discussion, Tim Lanane moved that the capital claims in the amount of \$113,778.91 be paid, and Susan Carpenter seconded the motion. The motion passed unanimously.

Claims for 40% Reimbursement in Non-Capital Cases: Deborah Neal explained to the new members of the Commission the system for counties to report their non-reimbursable expenses. Interim Chairman Judge Donohue asked for discussion of non-capital requests. There were no amendments to the requests. Betty Lou Jerrel made a motion to approve the non-capital requests for reimbursement totaling \$3,294,481.74. Susan Carpenter seconded the motion. The motion was passed.

Non-capital claims for the 1st quarter of 2007 are to be paid as follows:

INDIANA PUBLIC DEFENDER COMMISSION					
First Quarter (01/01/07 - 03/31/07) Requests for Reimbursements in Non-Capital Cases					
6/27/2007					
County	Total Expenditure	Adjustment	Eligible Expenditure	40% Reimbursement	Adjust %
ADAMS	\$63,907.05	\$16,817.64	\$47,089.41	\$18,835.76	26%
ALLEN	\$646,471.90	\$39,704.00	\$606,767.90	\$242,707.16	6%
BENTON	\$24,376.98	\$3,005.38	\$21,371.60	\$8,548.64	12%
BLACKFORD	\$29,131.41	\$2,914.25	\$26,217.16	\$10,486.86	10%
CARROLL			\$0.00	\$0.00	
CLARK	\$111,193.43	\$16,623.38	\$94,570.05	\$37,828.02	15%
DECATUR	\$38,478.08	\$12,826.03	\$25,652.05	\$10,260.82	33%
FAYETTE	\$122,001.80	\$23,044.78	\$98,957.02	\$39,582.81	19%
FLOYD	\$119,592.58	\$26,467.65	\$93,124.93	\$37,249.97	22%

FOUNTAIN	\$13,129.18	\$4,440.75	\$8,688.43	\$3,475.37	34%
FULTON	\$41,910.75	\$16,925.50	\$24,985.25	\$9,994.10	40%
GRANT	\$249,561.00	\$19,058.00	\$230,503.00	\$92,201.20	8%
GREENE	\$78,154.39	\$12,438.44	\$65,715.95	\$26,286.38	16%
HANCOCK	\$64,199.42	\$23,323.95	\$40,875.47	\$16,350.19	36%
HENRY	\$90,536.18	\$15,211.26	\$75,324.92	\$30,129.97	17%
HOWARD	\$386,083.99	\$53,946.48	\$332,137.51	\$132,855.00	14%
JASPER	\$26,376.15	\$9,359.28	\$17,016.87	\$6,806.75	35%
JAY	\$63,462.23	\$15,040.55	\$48,421.68	\$19,368.67	24%
JENNINGS	\$29,571.25	\$8,918.31	\$20,652.94	\$8,261.18	30%
KNOX	\$120,883.23	\$32,755.46	\$88,127.77	\$35,251.11	27%
KOSCIUSKO	\$96,431.73	\$31,456.34	\$64,975.39	\$25,990.16	33%
LAKE	\$821,759.35	\$2,453.01	\$819,306.34	\$327,722.54	0%
LAPORTE	\$125,597.60	\$26,248.49	\$99,349.11	\$39,739.64	21%
MADISON	\$394,024.94	\$37,916.58	\$356,108.36	\$142,443.34	10%
MARION	\$3,673,885.65	\$551,758.59	\$3,122,127.06	\$1,248,850.82	15%
MARTIN	\$13,416.93	\$4,367.08	\$9,049.85	\$3,619.94	33%
MIAMI			\$0.00	\$0.00	
MONROE	\$279,790.36	\$84,973.37	\$194,816.99	\$77,926.80	30%
MONTGOMERY	\$46,967.69	\$11,124.17	\$35,843.52	\$14,337.41	24%
NEWTON			\$0.00	\$0.00	
NOBLE	\$85,970.48	\$16,159.11	\$69,811.37	\$27,924.55	19%
OHIO	\$15,427.50	\$5,113.50	\$10,314.00	\$4,125.60	33%
ORANGE	\$102,600.32	\$19,008.86	\$83,591.46	\$33,436.58	19%
PARKE	\$33,397.65	\$10,924.46	\$22,473.19	\$8,989.28	33%
PERRY	\$57,590.59	\$13,976.90	\$43,613.69	\$17,445.48	24%
PIKE	\$92,926.50	\$37,353.13	\$55,573.37	\$22,229.35	40%
PULASKI	\$45,966.45	\$13,531.25	\$32,435.20	\$12,974.08	29%
RUSH	\$42,711.16	\$16,065.67	\$26,645.49	\$10,658.20	38%
SCOTT	\$36,878.65	\$8,623.37	\$28,255.28	\$11,302.11	23%
SHELBY	\$83,787.91	\$9,730.42	\$74,057.49	\$29,623.00	12%
SPENCER	\$13,245.37	\$2,899.07	\$10,346.30	\$4,138.52	22%
STEUBEN	\$58,679.42	\$9,207.15	\$49,472.27	\$19,788.91	16%
SULLIVAN	\$20,716.80	\$10,590.85	\$10,125.95	\$4,050.38	51%
SWITZERLAND	\$63,814.18	\$31,305.07	\$32,509.11	\$13,003.64	49%
TIPPECANOE	\$441,403.98	\$244,759.55	\$196,644.43	\$78,657.77	55%
UNION			\$0.00	\$0.00	
VANDERBURGH	\$533,415.12	\$86,663.44	\$446,751.68	\$178,700.67	16%

VERMILLION	\$34,114.74	\$14,351.72	\$19,763.02	\$7,905.21	42%
VIGO	\$302,261.34	\$75,931.80	\$226,329.54	\$90,531.82	25%
WARREN	\$7,200.28	\$3,717.78	\$3,482.50	\$1,393.00	52%
WASHINGTON	\$98,368.37	\$8,609.34	\$89,759.03	\$35,903.61	9%
WELLS			\$0.00	\$0.00	
WHITE			\$0.00	\$0.00	
WHITLEY	\$48,854.93	\$11,131.50	\$37,723.43	\$15,089.37	23%
TOTAL	\$9,990,226.99	\$1,752,772.66	\$8,237,454.33	\$3,294,981.74	18%

An updated summary of each county's response to their 90-day notice of non-compliance was provided and explained by staff counsel. Progress on the efforts to attain compliance will be closely watched.

Comprehensive Plans – Fayette (amended) and Adams (amended): Interim Chairman Donohue presented Fayette County's amended Comprehensive Plan for approval. Deborah Neal explained that Fayette County, which used an assigned counsel system that paid attorneys an hourly rate, was updating to a contract counsel system in an effort to save money. The amended comprehensive plan also included a provision for requiring written financial information from each person requesting a county appointed attorney in an effort to curtail county spending for criminal defense services for ineligible defendants. Fayette County attached a copy of the financial form to their amended comprehensive plan to be used by a judge to assist in determining indigence. Susan Carpenter moved to approve the amended comprehensive plan submitted by Fayette County, and Bettye Lou Jerrel seconded that motion. The motion passed unanimously. Judge Donohue suggested that Fayette County Public Defender Board issue a press release regarding their changes and conscientious efforts to save tax dollars and require accountability.

Interim Chairman Donohue presented Adams County's amended Comprehensive Plan for approval. Deborah Neal reported that Adams County has a contract system for providing public defense services, with an office and chief public defender. The amendments to the comprehensive plan include changing the position of chief public defender to managing attorney. This allows Adams County to not have to pay 90% of a full-time prosecutor's salary to a chief public defender, but instead the managing attorney contracts with the county and then receives an additional amount for the managing duties. Larry Landis said there is political resistance in the counties to the chief public defender being the highest paid county employee (Judges and Prosecutors are paid by the State). Henry County withdrew from the public defense program because they refused to pay the chief public defender the salary required by the Commission. Mr. Landis says there is proposed legislation to have the chief public defenders paid by the State in the same way that Judges and Prosecutors are paid. That would remove the local resistance to chief public defenders' pay. Bettye Lou Jerrel moved to approve the amended comprehensive plan submitted by Adams County, and Susan Carpenter seconded the motion. The motion passed.

Additional Staff Attorney: The Commission previously formed an interview committee to consider candidates for assistant staff counsel. Deborah Neal reported on her discussion with Lilia Judson, Executive Director of State Court Administration, as to whether an additional employee for the Public Defense Committee should be an attorney or an accountant. Interim Chairman Donohue suggested that the decision of how to fill an additional position be decided between Lilia Judson and staff counsel.

Policy Matters:

Standard H - \$60 Hourly Rate for Assigned Counsel: Deborah Neal reported that the \$60 an hour attorney fee set by the Commission's Standards has been the minimum rate for assigned counsel for several years. The Commission needs to consider if this fee is still fair, and if not, do they want to raise it. She reported that several counties pay more than \$60 an hour, however, if the Commission would increase that minimum hourly rate, the counties paying only \$60 per hour will have to bear the burden of financing the increase with more tax dollars. It would be necessary to give counties sufficient notice of any anticipated increase. Tim Lanane suggested that the staff let the counties know that the Commission is looking at the amount of this hourly fee, at the same time that information is gathered on exactly what each county is paying now.

Supplemental Public Defense Funds: Deborah Neal reported to the Commissioners that each county has, by state statute, a "supplemental public defender services fund," and that one of the Commission's statutory duties is to determine how the counties spend that supplemental fund. Ms. Neal stated that the Commission has never set down any rules or standards pertaining to the counties' supplemental public defender services fund, but the Commission has always allowed county expenses paid from that fund to be included in a county's quarterly request for reimbursement. She also reported that a survey of how each county uses the supplemental fund has not been conducted. Interim Chairman Donohue suggested that staff counsel inquire from each county how their supplemental fund is spent, and then have this issue as an agenda item for the next quarterly meeting.

Non-Agenda Issues:

Clark County Non-Compliance: Interim Chairman Donohue presented a letter to the Commission from Jeff Stonebraker, Clark County Chief Public Defender, informing the Commission that the public defense program in Clark County is not complying with caseload standards. Mr. Stonebraker states that without Commission intervention, the problem is going to become significantly worse. He anticipates the need for at least two more public defense attorneys in Clark County. Stonebraker's letter is asking the Commission for a directive to Clark County concerning this problem. Interim Chairman Donohue suggests that Clark County be sent a 90-Day Notice letter. Other Commission members agreed. Staff counsel is to be the signatory on the letter.

Contract Counsel Taking Cases as Assigned Counsel: Deborah Neal reported to the Commission that there are counties in the program that allow contract counsel to take public defense cases as assigned counsel for an hourly rate once they have reached their caseload limit under their contract. It is the belief of several counties that the assigned public defense cases do not count toward the maximum number of cases allowed by Standard J because the assigned cases are part of their private practice. Ms. Neal explained that the staff has never monitored the private practices of the public defenders. However, the attorneys are expected to report all public defense cases assigned to them regardless of how they are paid for these cases. Susan Carpenter said she does not agree that public defense cases taken as assigned hourly rate cases by contract attorney are private practice cases that do not have to be reported to the

Commission. Bettye Lou Jerrel said overworked attorneys cannot move cases quickly and that causes jail overcrowding. Judge Donohue reported that in Clark County the inmates found that the longer they stayed in jail the better deal they would get from the prosecutor. However, these long jail stays costs the county money. Tim Lanane asked what is the protection for the defendant when the attorneys cannot give quality representation because they are overworked. Peter Nugent warned that such practice could result in ineffective assistance of counsel claims on appeal. Mr. Nugent also asked which cases an attorney would give more attention – better paying private cases or \$60 an hour public defense cases? Mark Rutherford said he knew attorneys who handled both private and public cases and had a very heavy caseload, but were very effective counsel. He asked if having twice the allowed caseload is a bad thing if the attorney is doing a good job? Susan Carpenter stated the Commission does not have the staff to evaluate actual representation or keep track of private caseloads, so the Commission’s Standards are used to keep the attorneys in line on the number of public cases assigned. Larry Landis stated that some public defense attorneys do not have much of a private practice and they financially depend on the extra public defense cases. He says there should be a determination between full-time contract counsel taking assigned cases and part-time contract counsel doing the same. Mr. Landis argues that if a part-time contract attorney takes public cases for half his/her time, and has time to take an assigned case or two as part of the private practice, they should be able to take the case.

The Commission’s final determination regarding the issue of contract counsel taking assigned cases was for staff counsel to draft a guideline and put the matter on the next quarterly meeting agenda. The staff is to determine which counties are allowing this practice and which public defense attorneys are taking indigent defense cases in more than one county.

Meeting Dates: The 2nd and 3rd quarter meetings of 2007 will be held at 2:00 p.m. on September 26th and December 12th respectively. These meetings will take place in National City Center, 115 W. Washington Street, 12th Floor, Court of Appeals Conference Room A, Indianapolis, Indiana. The quarterly meetings scheduled for 2008 will be held at 2:00 p.m. on March 26th, June 25th, September 24th and December 10th. The offices of State Court Administration, which includes the staff counsel for the Public Defender Commission, will be moving January 2, 2008 to 30 S. Meridian Street, Indianapolis, and will occupy several floors of that building. There will be meeting rooms available for the Commission meetings; however, it is not possible to reserve one at this time. Location of the 2008 quarterly meetings will be announced at a later date.

The meeting adjourned at 4:35 p.m.

Judge Daniel Donohue, Interim Chairman

Date